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MINNESOTA BULLETIN NO. 330-6-1

SUBJECT: MGT – 2006 FOOD SECURITY ACT COMPLIANCE REVIEWS

Action Due By: Completion by October 13, 2006

Purpose. To provide information and instructions on the 2006 Food Security Act compliance review process and reporting requirements.

Expiration Date. December 30, 2006.

The sample tracts for the 2006 FSA compliance reviews are now available in the FSA Compliance Review web application. As in the past, this web application is accessed through the MyNRCS Field Tools tab, right hand column. The 2004 and 2005 review data are available for printing reports but no data entry can be made on these tracts. The current total number of reviews for the entire state stands at 780.

New Features include:

- Wording change in the wetlands review section but no new definitions.
- Choice list for reasons for selecting NN or NC HEL determinations when no wetlands are present.
- New reports have been developed.

Changes for 2006 include:

- The web application has more reports to make state analysis easier.
- Drop down list for comments on tracts that have no HEL or wetlands conditions.

All changes are documented in the revised user manual (dated January, 2006) that is available on the Help tab of the application. This manual has all the information concerning data entry for this application. This process also requires that producers undergoing a review be identified in SCIMS and that tracts selected for review be geo-referenced. Assistant State Conservationists (FO) are responsible to insure that their field staffs have been adequately trained on the use of the compliance review reporting software.

Reminders for conducting reviews:

- Tracts added by state or field office can be deleted by the state coordinator if it is not a correct tract. There should be no 'invalid' or 'tract not found' codes on tracts added by the state or field.

- Tracts that received a variance determination last year, have been added to the tract lists to be reviewed again this year as a limited review. Variance tracts not added by the national office will be added at the field office.
- Field offices will not modify compliance review lists, including changing or eliminating tracts, without approval of the Area Office Quality Control Officer.
- States need to add tracts on five percent of loan recipients.
- Government employees that farm and receive payments need to have compliance reviews every three years.
- Tracts should only be replaced by a valid reviewable tract.

All staff conducting compliance reviews need to be familiar with Part 518 of the NFSAM, Fourth Edition, available on the web on the NRCS On-Line Directives Management System, http://policy.nrcs.usda.gov/scripts/lpsiis.dll/M/M_180.htm.

Compliance Review Procedure for 2006

Timing for completion of the in-field portion of compliance reviews needs to correspond to the date appropriate for evaluating the practices in the HEL plan. Data entry into the website should be done as soon as possible within workload constraints, but must be completed no later than **October 13, 2006**. Each ASTC (FO) will provide quality control to verify that all of their Area's compliance reviews and the data entry have been completed by **November 1, 2006**.

Add-On Tracts

The system has mechanisms for creating new tracts or changing tract numbers when a tract is reconstituted. All tracts on the national list, or the land they represent, must undergo a compliance review. There are no exceptions to this requirement. The compliance data base should already include those tracts that require a mandatory review in 2006 due to a finding of less than full compliance in 2005. Each DC will verify the added on tracts with the results of their 2005 compliance reviews. Unless already done by the national office, all tracts found to be in non-compliance or given a variance in 2005 will be added to the 2006 list.

The following tracts will be added to the county compliance review list:

1. Each HEL tract(s) owned or operated by NRCS employees (Code U) are to be reviewed at least once every three years. NRCS employees are required to disclose their interest in farmland on form NRCS-CPA-1. Employees who have acquired land or interest in land within the past year and not reported this to the state office shall request and complete this form in 2006. The State Office maintains a complete listing of all employee owned land and those employees subject to reviews based on past employee submittal of this form.
2. Tracts owned or operated by other state, federal or local government employees and officials involved in the implementation of HEL and/or wetland compliance (Code U). These tracts can be reviewed once every three years, only if requested by that agency.
3. Tracts of persons requesting reinstatement. These are tracts found to be "NA" in a prior year and must receive a compliance review during the crop year reinstatement is requested. (Code A).

4. Tracts on which NRCS receives whistle blower complaints, tracts which we observe as possibly in non-compliance, tracts referred by another USDA agency or other additions (Code A). This includes tracts requested by FSA on Form 569 dealing with potential wetland, sodbuster and compliance plan violations.

5. FSA-Farm Credit rules require that five percent of their borrowers who farm HEL cropland receive compliance reviews. If requested, borrower tracts (code A) will be added to this year's compliance review list following the same procedure that was used last year. Each District Conservationist will meet with FSA and share a copy of the compliance review list indicating both tract numbers and operator names. It is the FSA's responsibility to select tract numbers and request compliance reviews to obtain a five percent sample of their borrowers. When it is necessary to add borrowers to the list, only one tract per borrower needs to be reviewed. It is FSA's responsibility to know which of their borrowers crop HEL and to provide any additional tracts, if needed. See NFSAM, Part 518.02, page 518.A.02-1, Fourth Ed., Amend. 1, April 1004.

After all additions have been made, the person assigned to do the reviews will review the list and identify any tracts that may represent a personal conflict or potential conflict of interest. Personal conflict would include tracts owned or operated by family members, personal fields, SWCD supervisors, or others that might interfere with an impartial review. When tracts where personal conflicts are identified, contact the Area Office for assistance in completing these reviews.

Exemptions from Compliance Reviews (for HEL Components Only) (NFSAM Part 518.04)

Tracts that meet any of the following conditions are exempt from the compliance review process:

- The tract has been reviewed at least once in the past two years and found to be "AA" or "UA".
- The participant's plan documents a fully applied RMS level system.
- Where crop residue management or use is the only practice in the conservation system for a specific field within the tract **AND** the USDA participant has either self-certified or provided by a technical service provider certification that the residue levels meet the requirements of the conservation system as specified in the FOTG. Self-certification records shall become a part of the compliance review record in that person's case file.

If an entire tract meets the criteria for exemption from the HEL portion of the compliance review, then use code "**EX**" to show that no compliance determination was made on this tract. If only a field is exempted, then fully document the field exemption in the remarks section of the software, and code the tract with the appropriate compliance review code based on the remainder of the field review.

In-field tract verification for wetland provisions are not exempted through this process. All compliance review tracts will be reviewed for potential wetland violations. The compliance review information for review of potential WC violations shall be completed and appropriately coded.

Partial Review of a Tract (NFSAM Part 518.04 d, page 518.A.04-1)

Compliance reviews may be limited to a partial review of the tract if the following criteria apply:

- A compliance review is being conducted as a result of a variance being granted in the prior crop year. The compliance review may be limited to the field or practice for which the variance was granted. If conditions warrant, the DC may elect to review the entire tract.
- The HEL review has been exempted due to any of the reasons listed in NFSAM Part 518.04 a through c. A review of the tract will be conducted for any potential wetland violations only.
- A variance was granted due to a disaster do not have to be included on the following year's compliance review list unless other conditions for a specific tract prevail.

Scheduling Compliance Reviews (NFSAM Part 518.01 c and d; page 518.A.01-2)

An appointment will be made with the person responsible for applying the plan on the tract being reviewed. NRCS will schedule reviews to encourage the producer's participation when possible. Producers are to be given at least 15 days notice but not more than 30 days notice prior to conducting the compliance review. The compliance review process is considered started once the producer notification letter is mailed.

Compliance reviews are to be conducted in a timely manner to provide the best opportunity for evaluating whether the scheduled practice(s) in the plan have been applied. Plans requiring crop residue management must be evaluated as soon as practical after planting.

Conservation System Revision (NFSAM Part 518.01 g; page 518.A.01-3)

NRCS will not provide technical assistance for conservation planning or conservation system modifications or revision until after the compliance review has been completed, unless the following situations apply:

- Planned structural conservation practices are scheduled to be installed during the same crop year as the review, but after the review has taken place.
- Existing structural conservation practices are in need of maintenance.
- The compliance review is completed when on-site field work has been performed.
- A conservation system is being applied that meets the FOTG requirements, but has not been officially documented in the USDA participant's case file.

Conducting Compliance Reviews

All of the procedures in **NFSAM Part 518, Subpart B – Conducting Compliance Reviews** will be followed.

The compliance review consists of an on-site comparison of the actual application of conservation practices and treatments against those in the approved conservation plan or the appropriate plan level. The reviewer should utilize any available records, including records supplied by the producer, contractors, crop consultants, FSA, and prior NRCS technical assistance notes during the compliance review process. Where the actual conservation system being used is different than the planned system, the review should be based on the system in place. In potential HEL violation cases, the reviewer's determination will be based on whether an approved conservation system is being or has been applied on the land.

Review the entire tract for potential wetland violations. The process will include a comprehensive evaluation that a wetland violation has not occurred on the entire tract.

Evaluation Tools

As was done last year, HEL compliance will be determined using RUSLE-2 soil loss technology. Where existing soil-loss calculations have been made using models other than RUSLE-2 additional calculations will be necessary.

Over the course of the last several years, many farmers have been removing or reducing the amount of forage crops in their crop rotations. Crop rotation changes are an allowable modification of HEL plans if the revised plan or system meets the ACS soil loss level (as described above) and ephemeral erosion is controlled. Controlling ephemeral gully erosion is a requirement of HEL compliance. Tracts where “**first time**” identified ephemeral erosion control measures are determined to be needed can be found “CA” and the HEL plan revised to add the necessary practices.

When using WEQ for evaluating conservation system planning and implementation on HEL fields due to wind erosion, the following guidelines shall be followed:

- If the conservation system was planned using the Critical Period Method of WEQ, then the conservation system implementation shall be evaluated using the Critical Period Method.
- If the conservation system was planned using the Management Period Method of WEQ, then the implementation shall be evaluated using the Management Period Method. **Do not mix the use of the two WEQ calculation methods.**

Compliance Review Documentation

All of the information about the tract and the compliance review will be entered in the appropriate data entry locations included in the Compliance Review Database. All reviews must contain sufficient documentation to fully support the determination for each field on the tract. Field staff will also use conservation compliance plans, conservation assistance notes, and other inventory forms as noted below to fully document their compliance review findings.

- Any producer that is fully applying their conservation system, as described in their compliance plan, or has a fully applied system which meets or exceeds the conservation required in their approved plan shall be determined “UA”. For “UA” determinations, document that all planned practices are applied and being maintained for the 2006 crop year. This would include showing all scheduled practices as applied in the conservation plan and a comment in the “Comments” box stating that “all scheduled practices are fully applied and being properly maintained according to the conservation plan.” Annual practices with threshold levels, such as residue management, will require documentation to show that they are adequately applied this year. For residue management, residue measurements will be documented according to policy.
- For all other determinations where the conservation plan is not fully applied (“AA”, “CA”, “AC”, “AE”, “AG”, “AH”, “AM”, “CA”) document the scheduled and applied practices as indicated for the “UA” determination (above) AND document:
 1. planned erosion rate.
 2. current erosion rate.
 3. ACS erosion rate.
 4. Why the fields are not “UA”.

- When a potential “NA” determination is suspected, make the producer aware of the situation. The producer should be given the opportunity to view the findings on-site with the reviewer. Field offices will contact the Area office for guidance on all “NA” determinations including granting variances and landowner appeal rights.
- Any field subject to sodbusting must have the “T” value documented to indicate the soil loss criteria to be achieved.
- N/HEL determinations will be field verified, including previously determined NHEL fields, where the original determination was completed in the office and the determination hinges on non-field documented PHEL soils.
- Compliance with wetland provisions can be documented by using on-site or offsite procedures or both, but will always include a complete aerial slide/imagery review. For all tracts with wetlands (including tracts without determinations or with non-inventoried areas) determine and document wetland compliance. The evaluation will include either a review of the current year imagery / photography or an in-field visit. On tracts without wetlands (entire tract labeled “NW” or “PC” or “NW/PC”) and without non-inventoried areas, this slide or in-field review is not required. Use the comments box in the software to make any necessary explanations.

The compliance review process is about making and documenting decisions. An integral element of the process is to insure that correct determinations are being consistently made. Adequate supporting documentation of compliance reviews must be included to achieve this goal. Enough documentation should be present to prove what led the reviewer to make the determination. Documentation is most critical on those determinations found to be “NA” or where a variance is being granted. All producers will be notified in writing of the compliance review results.

Direct questions on the information contained in this bulletin through your Area Office to Paul Flynn, State Resource Conservationist or Robin Martinek, Agronomist.

/s/

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